

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ERIC KIMBROUGH,

Plaintiff,

Case No. 12-10294

v.

Hon. John Corbett O'Meara

UNITED STATES OF AMERICA,

Defendant.

**ORDER GRANTING MOTION FOR
RECONSIDERATION AND DISMISSING COMPLAINT**

Before the court is Defendant's motion for reconsideration, filed June 22, 2012.

Defendant seeks reconsideration of the court's June 11, 2012 order extending the summons.

Plaintiff Eric Kimbrough filed this action on January 23, 2012, alleging a cause of action under the Federal Tort Claims Act. Plaintiff failed to properly serve the United States before expiration of the summons on May 23, 2012. See Fed. R. Civ. P. 4. On June 5, 2012, the court issued an order to show cause why the action should not be dismissed for failure to prosecute. In response, Plaintiff filed a motion to extend the summons, stating that he "inadvertently did not serve the Local U.S. Attorney within 120 days of filing the complaint." Docket No. 6. The court issued an order extending the summons on June 11, 2012.

At that time, however, the court was not aware that the United States twice informed Plaintiff's counsel – on February 24, 2012, and April 17, 2012 – that service was not proper. See Docket No. 10-3, 10-5. Defendant also informed Plaintiff's counsel how to properly effect service. In light of the circumstances, the court finds that Plaintiff cannot show "good cause" for

the extension of the summons and that his complaint must be dismissed without prejudice. See Fed. R. Civ. P. 4(m). The dismissal of Plaintiff's complaint would result in a different disposition of the case, because Plaintiff's action would be time-barred upon re-filing. See 28 U.S.C. § 2401(b).

Defendant has demonstrated a "palpable defect" by which the court has been misled, the correction of which would result in a different disposition of the case, thereby satisfying the standard for granting a motion for reconsideration. See L.R. 7.1(h).

Accordingly, IT IS HEREBY ORDERED that Defendant's motion for reconsideration is GRANTED and Plaintiff's complaint is DISMISSED.

s/John Corbett O'Meara
United States District Judge

Date: October 31, 2012

I hereby certify that a copy of the foregoing document was served upon counsel of record on this date, October 31, 2012, using the ECF system.

s/William Barkholz
Case Manager